In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.W.P.No. 14115 of 2006(O&M)
Decided on: Oct 13,2006

M/s.Gaurav Processors Pvt. Ltd and another ---Petitioners

vs.

Haryana Financial Corporation ---Respondents

Coram: Hon'ble Mr.Justice Jasbir Singh
Hon'ble Mr.Justice Pritam Pal

Present: Mr.Mohan Jain,Advocate, for the petitioners.

Mr. Kamal Sehgal,Advocate, for the respondents.

Jasbir Singh,J:(Oral)

C.M.No.17135 of 2006

C.M.is allowed. Replication is taken on record.

C.M.No.17083 of 2006

C.M.is allowed and Kanhaiya Lal Sharma, son of Sh. Hira Lal Sharma, is ordered to be impleaded as petitioner No.2 in this writ petition.

C.W.P.No.14115 of 2006

In this writ petition, challenge has primarily been laid to the Recovery Certificate Annexure P-5. By referring to the contents of the said Certificate, counsel for the petitioners states that no opportunity of hearing was granted to the petitioners, and further that the Officer, who passed the order, has not referred to any of the objections raised by the

petitioners in its representation Annexure P-4.

It is apparent from the record that the respondent-Corporation sent a notice to the petitioners under Section 32 (G) of The State Financial Corporation Act, 1951, asking the petitioners to pay the due amount and also to appear before the Managing Director, on a particular date, for the purpose of issuing Recovery Certificate. Notice indicates that it was issued to recover the money, by invoking the provisions of Haryana Public Moneys (Recovery of Dues) Act, 1979. This Court feels that in view of ratio of judgment rendered by the Hon'ble Supreme Court in the case of Unique Butyle Tube Industries (P) Ltd v/. U.P.Financial Corporation and others 1114, it is not open to the respondent-Corporation to invoke the provisions of above said Act, to effect recovery from the defaulters.

Be that as it may, when order Annexure P-5, was passed, admittedly, opportunity of hearing was not given to the petitioners. Further-more, the competent authority has not even referred that the petitioners had filed a representation/objections, in reply to the notice, referred to above. This clearly shows non-application of mind. In Delhi Financial Corporation v. Rajiv Anand 2004 (11) SCC 425, their Lordships of the Hon'ble Supreme Court, under similar circumstances, have observed thus:-

"There is no provision barring jurisdiction of Civil Courts. Thus a suit can be filed or resort can always be had to the High Court under Article 226 or Article 227 of the Constitution. Section 32-G provides that the State Government or the authority will issue a certificate after

following the procedure. The words " after following the procedure", necessarily indicate that principles of natural justice have to be complied with. Thus, notice would have to be issued, the parties concerned would have to be heard and then only the order would be passed. We see no substance in the submission that the order must always be a speaking order or a reasoned order. Considering the fact that the provisions only contemplate arithmetical calculations or simple verification, the question of any reasoned or speaking order, does not arise. All that is to be stated is that the amount is found due. On that basis the certificate of recovery is to be issued. We , therefore, see no substance in the submission that the provision is arbitrary or discriminatory.

We are told that now a procedure has been prescribed. Even though no procedure was prescribed earlier, it could not be denied that the principles of natural justice were followed. Notices were issued to the parties concerned. They were given a hearing. Their objections were taken into consideration and in their cases, speaking orders are passed. Pursuant to those orders the certificates of recovery were issued".

This Court feels that the authority concerned under the State Financial Corporation Act, 1951,is under an obligation to pass order, as has been indicated by their Lordships of the Hon'ble Supreme Court in Delhi Financial Corporation' s Case (Supra). Recovery Certificate issued, did not comply with the ratio of law, laid down by their Lordships of the Supreme Court in the judgment, referred to above.

Confronted with the above situation, Mr. Sehgal, states that

let Recovery Certificate be set aside and opportunity be given to the competent officer to pass fresh order.

In view of fair stand taken, the order Annexure P-5 (Recovery Certificate) is set aside. However, liberty is given to the Specified Authority under Section 32 (G) of the State Financial Corporation Act, 1951, to pass fresh orders. The petitioners are directed to appear before the said authority on October 23,2006, at 10.00.a.m.

Writ petition is disposed of.

(Jasbir Singh)
Judge

October 13,2006 (Pritam Pal)
RR Judge